

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
For

Wednesday, September 17, 2008

10:00 AM

Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: September 5, 2008

RE: Closed Session of the Board on September 17, 2008

Pursuant to Government Code section 11126, subdivisions (a), (c) (3), and (e) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge (ALJ). The decision summarizes the evidence received from the Division of Occupational Safety and Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. APPLE VALLEY FARMS, INC., 06-R2D5-1824
2. FORTUNA IRON WORKS, 06-R2D3-4222
3. MENDOTA UNIFIED SCHOOL DISTRICT, 07-R2D5-3572
4. NU PRINT & GRAPHICS, INC., 07-R4D1-3475 THROUGH 3477
5. RMW CONSTRUCTION, 05-R3D3-2236 AND 2237

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR September 17, 2008
Page 2

6. SAN CLEMENTE CITY OF UTILITIES DIVISION, 07-R3D7-1303 AND 1304
7. SHIMMICK CONSTRUCTION CO AND OBAYASHI CORP JV, 06-R5D3-1136
8. VEDA A. & JOHN R. TRONSKE dba SPECIAL T'S SHEETMETAL, 07-R3D3-4096 AND 4097

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge (ALJ) after a pre-hearing conference in which the Division of Occupational Safety and Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1. AMSWEDE INC., 08-R3D2-732 THROUGH 735
2. ARTISTIC TILE & STONE, INC., 08-R3D2-1496 AND 1497
3. B2 APPAREL INC. dba BB APPAREL, 08-R6D5-1113 THROUGH 1117
4. BEAZER HOMES, 07-R2D5-3663 THROUGH 3665
5. BENGARD RANCH INC., 07-R1D2-4596 AND 4597
6. BEST CHOICE POOL WORKS, 07-R6D5-5453
7. BIG LOTS STORES INC. DISTRIBUTION CENTER, 08-R3D3-310
8. BRETHERN HILLCREST HOMES dba HILLCREST, 07-R4D4-3503
9. CA TRANSPORTATION CALTRANS SAFETY OFFICE, 06-R2D5-2199
10. C.A.L. FRESH PULLET INC. dba C.A.L. FRESH, 07-R6D2-2137 AND 2138
11. CAL SPECIALTY RESTAURANT FIXTURES CORP, 08-R3D3-2200 AND 2201
12. C M E TRIM COMPANY, 07-R3D2-4014
13. CALIFORNIA MFG INC., 06-R6D2-2632 THROUGH 2638
14. CLEARLAKE LAVA INC., 07-R5D1-2641 AND 2642
15. CONTINENTAL FIBERGLASS, INC. aka HAWAIIAN FIBERGLASS, 07-R3D3-4401 AND 4402

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR September 17, 2008
Page 3

16. CREATIVE ENVIRONMENTS dba 201 WESTMORELAND LTD., 06-R4D1-2327
AND 08-R4D1-3120
17. CYPRESS BUILDERS, INC., 07-R4D4-3358 THROUGH 3362
18. DEPENDABLE HIGHWAY EXPRESS, INC., 07-R2D1-2317
19. DESERT AGGREGATES, 06-R5D1-3258
20. DESERT AGGREGATES, 07-R5D1-2908
21. DIXIELINE LUMBER, 06-R3D2-1577 THROUGH 1579
22. ELITE BUILDERS, 07-R2D3-3657 AND 3658
23. ENVIRONMENTAL MOLDING CONCEPTS LLC, 07-R3D3-5190
24. FW SPENCER & SON INC., 03-R1D3-1206
25. GBC CONCRETE AND MASON CONSTRUCTION, 07-R4D4-2258
26. GOLDEN SPECIALTY FOODS, LLC, 06-R6D2-5359 THROUGH 5368
27. GRUENDL INC. dba RAY'S ELECTRIC, 06-R1D4-4336 THROUGH 4338
28. HALEY BROS INC., 07-R3D3-739 AND 740
29. HAYWARD PALLET COMPANY INC., 08-R6D5-1555 AND 1556
30. HEADSTART NURSERY, 06-R1D2-1175 AND 1176
31. IMPERIAL FURNITURE, 07-R2D1-4116
32. JBA ASLAN COMPANIES, INC., 07-R3D1-3666
33. KHALSA CONSTRUCTION, 07-R1D2-3639 AND 3640
34. LAS PALMAS ELEMENTARY SCHOOL AND SUCCESSORS, 06-R2D4-2738 AND
2739
35. LE CHEF BAKERY, 07-R6D2-4010 THROUGH 4013
36. LEGGETT & PLATT, INC., 07-R2D4-4344

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR September 17, 2008
Page 4

37. LILY, INC., 08-R6D5-859 AND 860
38. LLAMAS FARM LABOR CONTRACTING, 07-R3D2-3454 THROUGH 3456
39. M & C LOW VOLTAGE, 07-R4D1-5366
40. McCLAIN PAINTING CHARLES A. McCLAIN, 07-R2D3-3025
41. MAINSTAY BUSINESS SOLUTIONS, 08-R4D2-1104
42. MARQUES PIPELINE, INC., 07-R2D1-630 AND 631
43. MID-STATE STEEL ERECTORS, INC., 07-R1D2-8 THROUGH 12
44. MULHAUSER STEEL, INC., 07-R6D2-3622 THROUGH 3626
45. NAMAR FOODS COMPANY, 08-R6D2-1781 THROUGH 1785
46. ORION DEVELOPMENT, 07-R2D1-4824 AND 4825
47. PALO ALTO VINEYARD MANAGEMENT, 06-R1D5-5034 AND 5035
48. JAE YONG PARK dba PARKS LANDSCAPING, 08-R4D1-1005 AND 1006
49. PACIFIC ERECTORS INC., 08-R1D2-2669
50. PLUMB TECH INC., 07-R4D1-5365
51. QMP, INC., 07-R6D2-4001 THROUGH 4004
52. QUEMETCO, INC., 05-R4D4-1812 THROUGH 1816
53. R.A.O. CONSTRUCTION CO., INC., 07-R2D3-4340 AND 4341
54. RAMCO CUSTOM HARVESTING/RAMCO ENTERPRISES, L.P., 07-R1D2-3751
55. RUMIANO CHEESE CO., 07-R2D3-4844
56. S G CONSTRUCTION, 07-R2D5-3245 THROUGH 3250
57. S & S FOODS, 07-R4D4-2124 AND 2125
58. ST. FRANCIS ELECTRIC, INC., 07-R1D4-3758

59. VICKY SALAZAR dba NEW STAR TRIM, 07-R4D1-3344 THROUGH 3347
60. SCUDDER ROOFING COMPANY, 07-R1D2-3635
61. SHARK PRODUCTIONS, 07-R4D1-1950
62. SHORE STEEL, INC., 08-R3D3-431 AND 432
63. SMUCKER QUALITY BEVERAGE, INC., 07-R2D3-1022
64. SOUTHERN SUN CONSTRUCTION, 08-R4D1-841
65. SPOONER'S WOODWORKS, INC., 07-R6D2-2068
66. SPOTLESS WINDOW WASHING, 08-R4D2-927 AND 928
67. STEVE WILLS TRUCKING AND LOGGING, LLC, 06-R2D3-5045
68. UNILEVER SUPPLY CHAIN INC., 06-R2D4-4595
69. WCR INC INCORPORATED, 06-R2D5-3124
70. WESTERN SCREW PRODUCTS, INC., 08-R6D2-1786 THROUGH 1790
71. WESTERN SUN PRODUCTS, 08-R3D2-419 THROUGH 423
72. WOOD BROS., INC., 06-R2D5-1995 AND 1996
73. YANG'S CONSTRUCTION, 08-R4D2-1517 THROUGH 1523
74. EUGENE ZAPPARELLI dba WEST END WOOD PRODUCTS, 07-R1D5-3759
THROUGH 3761

ORDERS DISMISSING APPEALS:

1. CARABELLA COLLECTION INC., 03-R3D1-2125 THROUGH 2127
2. COUNTRY VILLAGE, 06-R4D4-3792 THROUGH 3795
3. DENNY'S RESTAURANT, 03-R4D2-1652
4. FELIX SHUTTERS, 07-R6D2-4179 THROUGH 4190

5. GOLDEN BOY PIES OF SAN DIEGO, 03-R6D2-1198 THROUGH 1200
6. PRECISION FRAMING, 07-R4D3-2743 THROUGH 2745
7. THE WORLD OF WOOD, 06-R4D3-755

ORDER SANCTIONS AND DISMISSAL:

1. SCHINDLER ELEVATOR CORPORATION, 07-R3D1-3667

STIPULATIONS:

1. ALLIED WASTE SERVICES, INC., 07-R2D1-1131 AND 1134
2. ATLANTIC CONCRETE, INC., 06-R2D5-4237 AND 4238
3. CA GENERAL SERVICES, 06-R1D4-3052
4. KINDER MORGAN ENERGY PARTNERS, LP, 05-R2D4-2013 AND 2014
5. WASTE MANAGEMENT, 06-R1D2-3044 THROUGH 3046

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety and Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1. COUNTY OF LA/DEPARTMENT OF PUBLIC WORKS, 07-R4D2-2540
2. ESTENSON LOGISTICS, LLC, 05-R1D4-1756
3. FB CONSTRUCTION, 07-R1D2-3418 AND 3419
4. UPS, 07-R3D3-3322

DENIAL OF PETITION FOR RECONSIDERATION (DRAFTS):

1. BRENT GAUSDEN dba DISCOUNT CERAMIC TILES OF RIVERSIDE, 04-R3D3-3141 THROUGH 3144

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR September 17, 2008
Page 7

2. HOME IMPROVEMENT KING, 04-R4D3-2423
3. HUNT BROS. ROOFING, 07-R3D1-2324
4. JENSEN PRECAST, 05-R2D1-2377
5. MAXIMUM EXHAUST CLEANING, INC., 06-R3D3-543
6. BILL NELSON GENERAL ENGINEERING CONSTRUCTION, 06-R2D5-1551
7. NEW TORRAN BUSINESS GROUP dba SABROSO FOOD GROUP, 08-R3D-9269
8. PACIFIC DIE CASTING, CORP., 06-R4D2-157
9. QUEMETCO, 08-R4D4-94 AND 95

DECISIONS AFTER RECONSIDERATION (DRAFTS):

(If the Appeals Board grants a petition for reconsideration it reviews the facts of the appeal and then issues a decision after reconsideration upholding, reversing or modifying the underlying ALJ decision.)

1. A. TEICHERT & SON, INC., A CORPORATION dba TEICHERT AGGREGATES, 04-R5D2-850 AND 851
2. A & C LANDSCAPING, INC. aka A & C CONSTRUCTION, INC., 03-R4D4-4791
3. AC FRAMERS INC., 03-R2D3-3475
4. ASC PROFILES, INC., 06-R2D1-1181
5. BART, 03-R1D1-5170
6. BAY AREA SYSTEMS & SOLUTIONS dba BASS ELECTRIC, 01-R1D3-106
7. BIMBO BAKERIES USA, 03-R1D3-5215 THROUGH 5217
8. BLF, INC. dba LARRABURE FRAMING, 03-R4D3-4428 AND 4429
9. BLF, INC. dba LARRABURE FRAMING, 02-R4D1-4675 THROUGH 4680
10. BLUE DIAMOND MATERIALS, 02-R5D2-1268
11. CALDWELL-ROLAND ROOFING, INC., 03-R1D4-2905

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR September 17, 2008
Page 8

12. CALIFORNIA FAMILY FITNESS, 03-R2D1-95 AND 96
13. CALIFORNIA FRESH FARMS, LLC, 06-R2D4-4127 AND 4224
14. CENTRAL CHEVROLET, 05-R1D4-2615 THROUGH 2618
15. CENTRAL VALLEY CONTRACTING, 05-R4D3-2351
16. COX COMMUNICATIONS, 03-R3D2-1942
17. DADE BEHRING, 05-R2D1-2203
18. DAKOTA COMPANIES UNLIMITED, 05-R4D3-392 AND 393
19. DAVIS BROTHERS FRAMING, INC., 03-R3D1-114
20. DAVIS BROTHERS FRAMING, INC., 05-R3D3-634 THROUGH 636
21. DYNALECTRIC, 03-R1D1-4101
22. ETTER & SON CONSTRUCTION, INC., 03-R1D5-3131
23. FORKLIFT SALES OF SACRAMENTO, INC., 05-R2D1-3477
24. G.T. ALDERMAN, INC., 05-R4D3-3513
25. GENERAL TRUSS CO. INC., 06-R2D1-783 AND 784
26. GHILOTTI BROS. CONTRACTORS, 04-R1D5-2321 AND 2322
27. GLASS PAK, 03-R2D2-750 AND 751
28. GOLDEN STATE BORING & PIPEJACKING, INC., 05-R5D2-2359
29. HARRY L. MURPHY, INC., 06-R1D2-218 AND 219
30. HEARN CONSTRUCTION, INC., 02-R6D1-3533 THROUGH 3536
31. HELPMATES STAFFING SERVICES, 05-R3D3-2239
32. H.M. CONSTRUCTION, INC., 08-R3D2-9007
33. HUSSMAN CORPORATION, 03-R3D1-2939

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR September 17, 2008
Page 9

34. ILH CONSTRUCTION, 02-R1D1-4172
35. INDUSTRIAL MASONRY, INC., 07-R3D2-735 AND 736
36. JOHN LAING HOMES, 04-R3D1-194 AND 195
37. KELLY SERVICES, INC., 06-R1D2-1024
38. KENNY-SHEA-TRAYLOR-FRONTIER/KEMPER, JV, 03-R5D2-323
39. LOS ANGELES, CITY OF, FIRE DEPARTMENT, 03-R2D5-3960
40. LOS ANGELES, CITY OF, HOUSING AUTHORITY, (HACLA), 05-R4D2-2541
41. NAUTICAL ENGINEERING, INC., 06-R6D1-4868 THROUGH 4872
42. BILL NELSON GENERAL ENGINEERING & CONSTRUCTION, 06-R2D5-1552
THROUGH 1554
43. O & M INDUSTRIES, 04-R1D5-1597
44. P G & H CONTRACTING, INC., 06-R4D3-1657 AND 1658
45. PMR RACE CARS, 03-R3D3-1825
46. POUK & STEINLE, INC., 03-R4D2-1495 AND 1496
47. RII PLASTERING INC., 02-R3D1-2679
48. R & L BROSAMER, INC., 03-R1D5-4832
49. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-1417
50. STACY & WITBECK, INC., 05-R1D1-1142
51. STATE CENTER COMMUNITY COLLEGE DISTRICT, 05-R2D5-1688 THROUGH
1692
52. STRUCTURAL SHOTCRETE SYSTEM, 03-R4D3-986
53. TEICHERT AGGREGATES, 04-R5D1-2982
54. TRIO METAL, 03-R4D4-317

55. UKIAH FORD-LINCOLN-MERCURY, INC., 06-R1D5-2256 AND 2557

56. WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095

57. WESTCOAST COMMUNICATION, 05-R2D3-2801 AND 2802

PENDING LITIGATION:

(If the Division of Occupational Safety and Health or the Employer disagrees with a decision after reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. WESTERN MILLING, LLC, 06 CE CG 04007 (06-9039/9040)
2. UNITED AIRLINES dba UNITED AIRLINES SFO SYC, 07CS00331 (00-2844)
3. HARRIS CONSTRUCTION COMPANY, INC., 07CS00518 (02-3914)
4. JERLANE v DIVISION OF OCCUPATIONAL SAFETY & HEALTH, 37-2007-0005631-CU-WM-NC, (01-4344/4345)
5. J.F. SHEA CONSTRUCTION, INC. (DOSH V OSHAB), 34-2007-00882187-CU-WM-GDS, (02-801)
6. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB), 34-2007-00882192-CU-WM-GDS, (01-3261)
7. BRUTOCO ENGINEERING & CONSTRUCTION, INC., 30-2007 00100159 (07-9223)
8. MURRAY COMPANY, BS112469 (07-9190/9192)
9. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (00-440)
10. KHS & S CONTRACTORS, 32-2008-00107284-CU-WM-GDS CJC (00-440)
11. ARTHUR J. BREWSTER CORP. dba PRESTIGE KITCHENS, INC., 30-2008-00110573 (08-1121)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR September 17, 2008
Page 11

APPELLATE COURT:

NONE

OTHER LEGAL MATTERS:

(Any legal matter that comes about after the agenda is noticed 10 days in advance of the meeting announcement and that must be acted upon or legal matters pending before the Board requiring specific Board action but do not fall within the above categories.)

PERSONNEL:

(Issues regarding staff.)

Any matter not completed at this Closed Session may be continued to subsequent meetings.